IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10693 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUAJRAT STATE ROAD TRANSPORT - Petitioner(s)

Versus

PREMJIBHAI GOVINDBHAI CHAVDA - Respondent(s)

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Appearance :
MS MONALI H BHATT for Petitioner(s) : 1,
MR AS SUPEHIA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 20/02/2006

ORAL JUDGMENT

1.Heard learned Advocate, Ms. Monali H. Bhatt on

behalf of the petitioner and learned Advocate, Mr.A.S.Supehia for the respondent. In the present petition, the petitioner-Corporation has challenged the award passed by the Industrial Tribunal, Bhavnagar in Reference (IT) No.35 of 1997 dated 09/12/2003, wherein the Industrial Tribunal, Bhavnagar has set aside the impugned award and directed the Corporation to pay the difference of salary with consequential benefit to the workman. The learned Advocate, Ms. Monali H. Bhatt submitted that the accident was occurred due to the negligence of driver and that is how the damages caused to the Bus of Rs.14,584.78, which was mentioned in the charge-sheet by the Corporation. However, the Industrial Tribunal has committed gross error in setting aside the entire punishment order.

2.She also submitted that recovery of Rs.10,000/- is reduced by the First Appellate Authority to Rs.7,000/-, even though the Tribunal has interfered with the punishment, therefore, the Industrial

Tribunal, Bhavnagar, has committed gross error in setting aside the punishment order.

3.The learned Advocate, Mr.A.S.Supehia submitted that the negligence of the workman was not found to be proved in the departmental inquiry and the defence was not considered by the competent authority. He also submitted that there was no eye-witness examined in departmental inquiry and therefore, the Industrial Tribunal has rightly set aside the punishment imposed by the Corporation.

4.I have considered the submissions made by both the learned Advocates and I have also perused the award passed by the Industrial Tribunal, Bhavnagar and also perused the documents, which are produced on record by the Corporation. The Industrial Tribunal has considered that report made by Depot Manager was not remained present at the time when the accident was occurred. The Depot Manager, subsequently after the accident was occurred, visited the place of accident, but no Panchnama was

drawn at the place of accident and no information has given in the accident form T-5. The Tribunal has also considered that no statement of any passenger or no independent witness has been recorded at the place of accident. The Tribunal has considered the statement of Conductor as well as Driver and considering the statement, a fact has been established that it was rainy season and just to save the children, the Bus was turned to left side and that is how the Bus was slipped, but Tribunal has considered that what was the speed of the Bus, was not proved by the Corporation against the workman. The Tribunal has also considered that even in accident form, the speed of the Bus was not mentioned and there was no evidence in respect of speed on record. Therefore, the charge of negligence against driver is not proved in departmental inquiry in absence of any eye-witness. Therefore, Industrial Tribunal has come to a conclusion that findings given by the competent authority is baseless and perverse and punishment based on such findings cannot be sustained. The

Tribunal has considered that the competent authority has not discussed the evidence on record and even also not discussed the defence of the workman. There was no cross-examination of the statement made by the driver and merely on assumption, the punishment has been imposed by competent authority, therefore, punishment is required to be set aside. Ultimately, on the basis of these findings and reasons given by the Tribunal, the punishment has been set aside.

5.I have considered the findings given by the Tribunal after considering the evidence on record and for that according to my opinion, the Tribunal has not committed any error, which require any interference by this Court while exercising the power under Article 227 of the Constitution of India. If the Corporation is not able to prove charge of negligence against the driver by cogent evidence and speed of Bus also not proved, then punishment order imposed by the Corporation is liable to be set aside and that aspect has been

rightly appreciated by the Tribunal. For that, no error found apparently on the face of record. Hence, there is no substance in the petition. Accordingly, present petition is dismissed. Rule is discharged. Interim relief, if any, stands vacated.

(H. K. Rathod, J.)

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